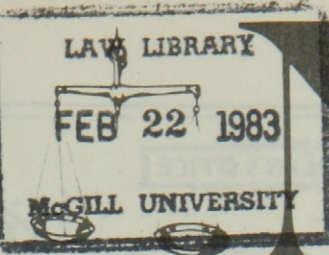


# Quid Novi



VOL. III NO. 19

McGILL UNIVERSITY FACULTY OF LAW  
FACULTE DE DROIT UNIVERSITY MCGILL

February 16, 1983  
16 février, 1983

## Editorial Vote Yes

The Report of the Ad Hoc Review Committee has finally been released. Among its observations is that "if 4 student representatives were acceptable a decade ago, then a significant increase in their number should be acceptable today as the faculty has grown considerably in size." In light of the Review and in light of consultation with students and the faculty, the Dean and other senior faculty members seem to have decided that the time has come to resolve the issue of student representation. Today the faculty decides whether student representation should be increased to eight and whether a one to four ratio of students to Faculty should be adopted.

Doubts may linger among some faculty members about the repercussions of such an increase. Those who remain unpersuaded seem to have three major concerns. First, they question whether students are sufficiently sensitive to the Faculty's long-range goals. Second, they believe that students may be in a position to disrupt the school's policies by voting en bloc. Third, they question whether any more representation is needed to express the student viewpoint on Faculty Council. Let's examine these three objections.

As the Report notes: "The experience of other universities and other faculties is that when students are present on Faculty Council in sufficient numbers, they participate with maturity and with great care; they do not pretend to speak on matters not within their experience; they take their responsibilities seriously; and they tend to divide on issues in much the same way as staff." Indeed, the ability of students to take responsible decisions is part of their training in law school. After all, these are the same people who will decide how best to act for their clients once they leave law school. If the Faculty adopts the proposal that some students sitting on Faculty Council also sit on committees, they will ensure that the students sitting on Faculty Council will be better informed. They would sit not just as students but as members of the Faculty community as a whole.

Some professors have identified last term's vote on the exam timetable as an example of a questionable pedagogical decision brought about by student block voting. One hastens to point out that the motion was supported by many faculty members. Moreover, even if one accepts that eight students will vote en bloc, what kinds of issues will bring them to do so? Are issues of immediate concern to students like exam timetables and study weeks really the issues that decide the policy direction of the school?

Cont'd on p. 4

## Selection of a Dean

by Paul Mayer

Dean Brierley's second term of office will end on May 31, 1984. Two students are to be named to a selection committee which will make a recommendation to Principal Johnson.

According to the Principal's office, the selection process usually starts eighteen months to a year before the commencement of the terms of office. They indicated the selection of a Dean is being discussed at the moment. Although no action has yet been taken, most probably the committee will be struck this spring.

The Statutes of McGill University set out the selection process. Upon recommendation of the Principal, the Board of Governors appoints the Dean of each faculty. The Principal starts the process by writing to different parties soliciting membership for a seven-member Recommendation Committee. Two members are elected by faculty, two members are appointed by Senate, and one member is appointed by the Board of

Cont'd on p. 2

### Student Representation

Students are urged to attend the Faculty Council meeting on February 16 at 4 p.m. in Room 202.



# Selection

Cont'd from p. 1

Governors. Two of the members are to be students who will either be elected or appointed depending on the method the L.S.A. wishes to adopt.

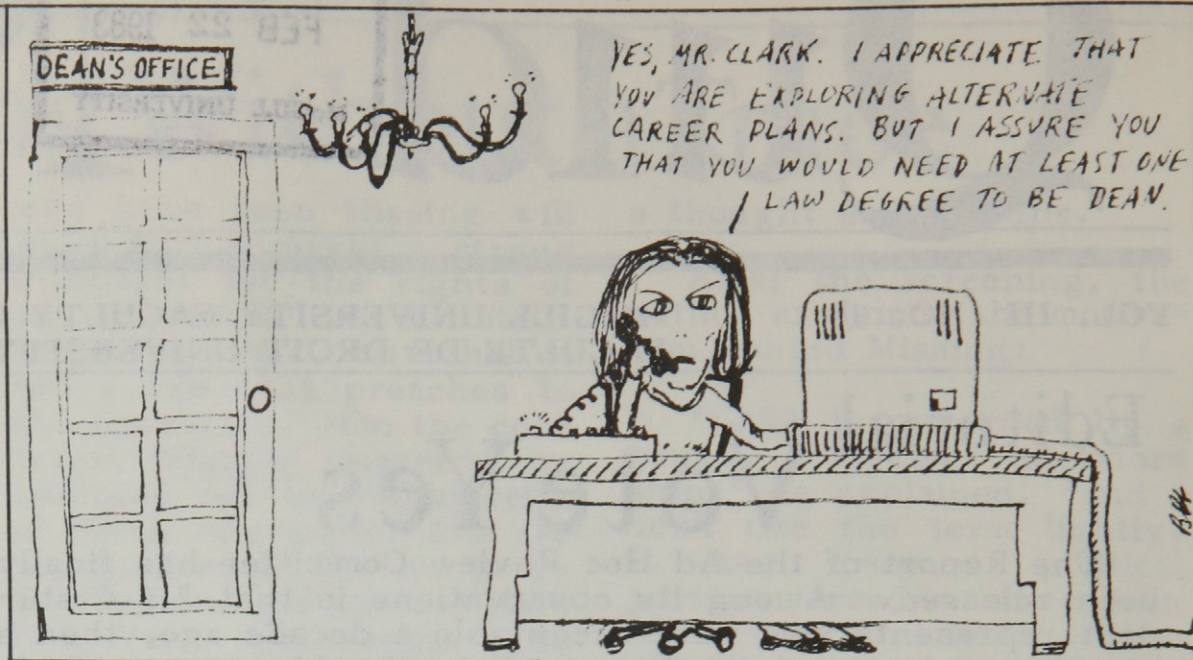
Many students feel that careful consideration will have to be given to the manner in which these students will be chosen. They feel that this is something which should be done as openly as possible, since the recommendation which emanates from this Committee will decide what kind of person will lead this faculty in the years to come.

## An Insider, or an Outsider?

The selection of the Dean is of great interest to students. Among students several names from within the faculty reappear more often than others as favourite candidates. Yet others would prefer someone with a high profile from outside the faculty. One student was of the opinion that the faculty needs "direction and focus...from someone who doesn't have his own ax to grind, someone with clout." Amongst those most often mentioned from outside the faculty are high profile types such as Allan Gotlieb, Alex Paterson, Walter Tarnopolsky, Robert Bourassa or Judge Allan Gold. Some students wonder, considering the constraints of the position, whether they would be willing and available to serve.

## Durnford Prefers Insider

Professor Durnford, who was Dean from 1969 to 1974, feels that this faculty is administratively very complex to run. For this reason he would prefer someone from within the faculty if such a person were "competent and acceptable." A faculty member would be



familiar with the problems such as "the delicate relationship" between the common and civil law programs. Other factors in favour of selecting someone from within are firstly, that such a person would be known by his or her colleagues and secondly, it would prevent the possible danger of resentment which might otherwise arise if an outsider were appointed.

He said the Dean should be someone who is respectable, with credibility as a scholar in both legal communities. Since he will be "swamped" with administrative work he or she will have to be a "superb" administrator. But primarily, Professor Durnford felt that the next Dean should be a person with the strong leadership qualities required to pull the faculty together. "He must be a leader of men...A Dean only has authority if his colleagues trust and support him."

## Brierley Favours a Consensus Figure

Dean Brierley believes the Dean should be someone who will be able to reach a consensus between the factions both within the faculty and in the university as a whole. The job requires someone who has the ability to strike compromises and the strength to make decisions. Whether an insider

or an outsider, "whoever is chosen has a lot to learn. There is a lot of work the Dean does which no one on staff or in the student body knows about." He spoke of the financial and bureaucratic constraints of his office which might limit the attraction of his position. He believes this faculty is the most difficult one to administer in this country.

He feels his greatest achievement as Dean is "the progress over ten years in difficult times...No flashy progress...but a refined curriculum and an expansion in a number of ways."

His major disappointment was "the very serious whittling of the budget" in his second term. "It is a grim job to be cutting budgets."

But now he feels vindicated by the Faculty Review, "which will reverse the flow of resources." Agreeing with the conclusion of the Review, Dean Brierley said this faculty has a "potential for greater eminence than it has achieved", an eminence which he believes is reflected by the quality of teaching, the stature of the staff, and the quality of the students who graduate from the Faculty. There is a challenge that flows from that."

## Students Elect a Dean?

According to Dean Brier-

Cont'd on p. 8



# Vining:

## Re-Thinking Legal Authority

This is the second part of an interview conducted by Richard Janda, Daniel Gogek, and Henri Pallard, with Professor Vining of Michigan Law School.

**Janda:** You speak of "a return to legal authority" in teaching law. And yet, having heard two lectures of yours, allusions come up to Marx and to opera and to painting. If you suggest a return to "legal questions", a return to "legal authority" one might perhaps be surprised that in your lectures there is not much of a sprinkling of cases. What does it mean then to return to legal authority?

**Vining:** Gosh, I don't know. If you went to a substantive law class of mine you would find lots of cases. I do try to teach people the law but I just think that law students should be far more aware of having a distinctive identity, far more subtly aware of what it is they do with the materials they work with. I think that one part of the alienation of law students from their own profession is that they are denegated. They think that it's only a word game and if they were not paid so well they really would not be very respectable. I think it's quite respectable, very solid, and very exciting. Someone in the class was asking just what I meant by cynicism. When you get out in practice, I think you do find an enormous division between the stances that you can take towards the law. If you're a tax lawyer your stance is really quite hostile. The law is a set of rules which are like the rules of hockey. You get around them, you use them to

trick your opponent. But if you are asked, for instance, to write an opinion letter for a third party, you're supposed to write in good faith. You are not supposed to make an adversary art of it. You are supposed to say what you think the law is, and at that point, your stance is very different and you become responsible. Indeed, you are compelled to be responsible. To the degree your thinking about law pushes you into the manipulative stance, I think you end up feeling like a manipulator. It's almost a neurotic state. People like that are sometimes called sociopaths in forensic psychiatry.

**Janda:** Another word for them is shysters.

**Vining:** I was thinking of something more medically respectable. Indeed, you often institutionalize totally manipulative people.

**Janda:** I'm wondering about the implications for curriculum of what you're saying. Is the implication that one should take seriously a kind of standard curriculum -- teach people respect for the subtleties of contract, the subtleties of tort and introduce them to those matters that are the legal questions par excellence?

**Vining:** Well, I think that should certainly be the core. I think probably that all of us struggle with having some mode of political education wherein students gain some experience of the reality of these problems, the reality of clients and so forth. I think that is valuable. As far as what we should add to the core curriculum, I don't

know.

**Pallard:** What should be the goal of legal education? Should it form lawyers or should lawyers be formed through the articling process?

**Vining:** What we are trying to give you is a professional identity. You should not leave school until you have the sense that you are a "lawyer". Now, what must go into that -- whether it be Moot Court experience or clinical experience or a good deal of the standard case teaching encased in opportunities to reflect on it -- I'm not sure. But that seems to be the goal. The goal is to make you a practical intellectual.

**Pallard:** Are students coming out today with that  
**Cont'd on p. 4**

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# Quid Novi

Quid Novi is published weekly by students at the Faculty of Law of McGill University, 3644 Peel St., Montreal H3A 1W9. Production is made possible by support of the Dean's office, the Law Students' Association, and by direct funding from the students. Opinions expressed are those of the author only. Contributions are published at the discretion of the editor and must indicate author or origin.

## Vining

Cont'd from p. 2

professional identity?

**Vining:** Yes, I think they do. Why they do I do not know. It may be if we had no classes at all, if we just required students to come and to stay in residence with each other for a certain amount of time that they would come out with a professional identity. That is possible.

**Janda:** But do you think this model curriculum answers the problem of disenchantment we're talking about? According to you, the response of American law students to the case method and to the old authority structure was disenchantment. Now you are suggesting a return to authority.

**Vining:** It is a return with a twist. The one aspect of modern life that legal education has not responded to at all is bureaucracy and its complexity. The models of bureaucracy that law schools work with are really agrarian models. There is a struggle in American law schools, such as Yale and Michigan, to begin to come to grips with the fact of

## Editorial Cont'd from p. 1

On issues such as what the National Program should be, there are as many views among students as among faculty. And with eight students representing a variety of concerns, student members are likely to be divided even on so-called "student" issues.

Students are not asking for more representation as a reward for their participation in the school. Nor are they asking for it because they seek "student power". Rather many students are committed to the unique prospects for legal education that McGill has to offer. They are especially concerned at a time when fundamental choices must be made about where the Faculty is going. Faculties in transition must persuade their student bodies that change is for the better and that inconveniences are worth bearing. If goals are worked out together, they are realizable. But if students believe that the faculty does not want to take their views into account and doesn't care about their participation, tension and hostility are created. Especially now, when the need for cooperation is at a premium, the faculty cannot afford to breed bad blood. Perhaps there is no philosophical justification for the particular ratio of one to four. But that ratio has worked on committees, and it is consistent with the Review's recommendations.

The time has come to end division. Not only must our faculty use its time in a more productive way, but it should not now prejudice the credibility of the Review report. The best interests of the school suggest that student representation should not remain an annual hang-over. We trust that the faculty will vote in the school's best interests and create the climate of mutual respect that is needed to undertake the rest of the Review's promising recommendations.

**Richard Janda  
Demetrios Xistris**

bureaucracy. How one comes to grips with it I don't know, but at least it's beginning.

**Janda:** If bureaucracy is really the legal problem of our time, why is it then that the old courses, the old method, makes any sense? Shouldn't we be talking instead about how to approach these new institutional structures directly? Instead of teaching a contract course shouldn't we be teaching about cutting through red tape?

**Vining:** Well, no. You certainly shouldn't toss out all the old inquiries. A lot of the world operates that way. You can't underestimate how hard it is to shift away from old habits.

It is impossible to bring in experts in bureaucracy from political science and expect to get very much out of them for the purposes of lawyers and law school, because they are operating almost completely with other goals in mind. If you read Simmons' Administrative Behaviour, which is the Bible for decision theory analysis of bureaucracy, you suddenly realize that you're back to a kind of naive 19th century positivism. You find it in the first three chapters. It is just not very helpful for a lawyer. It's as if you have to start something from scratch. What precisely we can teach in law schools I'm not exactly sure. But some re-thinking must go on.



# LETTERS

## To the Editor,

I wish to take this opportunity to comment on an article entitled "The Law, teaching and Professor Stevens" by Messrs. Barker and Pallard. I believe the story did a serious injustice to Prof. Stevens. The authors apparently took it upon themselves to discuss the concerns of "certain students" about the "mixed reactions" Prof. Stevens' teaching has received. The first question which comes to mind is why single out this individual for a public discussion of his alleged strengths and weaknesses? Are we now to expect regular features in the Quid analyzing the inadequacies of other members of the teaching staff? And will the Quid respect the professors' right of rebuttal and allow them to air their perceptions of students?

Very likely we have all suffered through courses which were poorly and/or ineffectually taught, and the word quickly becomes known through the grapevine. To interview a Professor for an article where, it would seem, he must have inevitably been placed in the position of defending himself, smacks of yellow journalism. The role of the Quid should be to "inform, stimulate, and entertain" -- which it more often than not does. However, in my opinion, the Quid Novi is not a proper forum for articles such as this. But if the Editors feels that it is, then I believe an effort should be made to present a more balanced picture.

**Wayne Burrows**  
LLB III

## Coming Soon

Meet the 'Moins with an exclusive interview with Master 'Moin himself -- Wayne Burrows!

## To The Editor:

The following is the text of a letter recently sent on behalf of Women and the Law to the firm of McMaster Meighen.

Dear Sir:

It has been brought to the attention of the McGill Association of Women and the Law that in interviews held by McMaster Meighen at McGill in October, some female applicants were subjected to questions which we find unprofessional and irrelevant. For example, an interviewer for the firm asked one of the applicants: "Well Miss Doe, what do you have to offer us other than your smile?" The tone of this question is insolent. Students should not be subjected to this kind of question. More subtle examples, albeit equally objectionable, include inquiries into the status of relationships with husbands and boy-friends, plans for children

and the compatibility of a law career and a family. In light of the fact that these sorts of questions have repeatedly appeared in interviews with several students, it is reasonable to conclude that they are given weight in the selection process. Essentially, the process of an interview is to allow the interviewer to make an assessment of the applicant's probable success at a particular job. We feel to see the relevance of these questions in making such a prediction. If they are one of the factors used as a basis for selection, then perhaps the interviewer should refer to s. 10 and s. 16 of the Quebec Charter of Human Rights and Freedoms. They state:

s. 10 - Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, color, sex, sexual orientation, civil status,...

**Cont'd on p. 7**

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**Cont'd from p. 5**

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

s. 16 - No one may practice discrimination in respect of the hiring, apprenticeship... of a person...

The Quebec Human Rights Commission has informed us that if a question such as the applicant's desire to have children is given weight in selecting a candidate, the interviewer would be engaging in discriminatory hiring practices under the Quebec Charter of Human Rights and Freedoms.

It may be argued that addressing these types of questions is an interview tactic, the objective being to observe the reaction and response of the interviewee. This is a valid argument. However, may we suggest that the same ends can be achieved without resorting to discriminatory questions or statements. Many McGill students have had interviews in Ottawa, Toronto, Montreal and Vancouver and they were not faced with questions of this sort. Rather they were uniformly treated with a respectful and professional attitude.

Female applicants are faced with a dilemma when asked these questions. Although they find the questions irrelevant and objectionable they rightly feel that they will be penalized if they decline to answer.

In conclusion, we would like to point that the image of professionalism usually associated with the legal profession is damaged by interviews of this sort as is the reputation of the law firm itself.

**Woman and the Law**

**Dear Women and the Law:**

We have your letter of January 10th, 1983, referring to an interview held at McGill University by members of our firm last October, and thank you for bringing to our attention your concerns.

As a result of the interviews and an ad we placed in the newspapers during the year, you may be interested to know that we hired four female and four male applicants in 1982, and during that same year our Toronto office also hired an equal number of male and female lawyers.

In relation to our policy with regard to criteria used to select candidates and our interview procedure, we send teams of two lawyers to McGill and Université de Montréal, one male and one female, who are armed with a list of questions prepared as guidelines only.

You can appreciate that we do not restrict these teams to these questions alone as to do so would defeat the purpose of the interview. The guideline questions are identical for male and female applicants.

The offensive question that you refer to: "Well Miss Doe, what do you have to offer us other than your smile?" could have been equally asked to a Mr. Doe, and if it was asked by one of our interviewers, we are certain it was not done with an intent to discriminate, as suggested in your letter.

In any event, you can rest assured that the so-called "subtle examples" of which you complained, do not form part of our guideline questions.

We will keep your letter on file for future reference when conducting next year's interviews.

Yours very truly,  
(Signed)

**Alex K. Paterson Q.C.**

**Announcements**

**PARTY!!!**  
**Feb. 17th, at the**  
**Union**

**The Social Committee**

**Beating the Bushes**

Do you think that the little extras are missing from our student life?

Two programs, the Personal Appeal Mailing Program and the Phonathon, have been set up in conjunction with the Dean and the Alma Mater Fund to raise money for a Student Aid Fund. The Money raised will be available for student activities and facilities. The PAMP involves the drafting of a letter to graduates. After the letter has been reproduced, it will need only to be addressed and signed. The Phonathon will be held on Feb. 21-22, starting at six with refreshments and instructions. The actual phoning will be between seven and nine.

There will be a meeting for all those interested in participating Wednesday Feb. 16 at 12:30 in the Dean's office. For those unable to attend, the information will be available at SAO.

**Christopher Broadbent**

**Catch Legal Information**

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**Law Banquet**

The Annual Law Banquet will be held March 12th at the Bonaventure Hotel. Tickets will be on sale starting February 28th.

Everyone is welcomed and encouraged to attend.

**The Social Committee**



# Histoire d'eau

Ceci se veut une petite histoire eau-tour de l'eau.... Après mûre réflexion, j'en suis arrivée à la conclusion que l'étudiant moyen de la Faculté est de type cham-eau. En effet, comment expliquer autrement ce désintéressement total face à ce liquide sain, désaltérant et surtout économique?

Ecartant cette hypothèse de cham-eau qui, j'en conviens, n'est pas très flatteuse, j'en arrive à une autre conclusion: la qualité de l'eau dans toute la Faculté laisse grandement à désirer. Quelle ne fut pas ma surprise quand, jeune étudiante assoiffée de première année, je me précipitai à la fontaine déserte de la bibliothèque. L'eau chaude coula alors joyeusement (comme pour mon bain, je cherchai le robinet d'eau froide mais ne le trouvai point).

En plus de la chaleur, le goût me laissa étonnée: jamais encore n'avais-je bu une eau ayant un si bon goût de poussière. Puis je pensai: peut-être avait-on décidé de blanchir la profession, en servant de l'eau de Javel aux futurs avocats?! Le proverbe pourrait maintenant se lire comme suit: "cham-eau échaudé craint l'eau chaude" (adaptation libre de "chat échaudé craint l'eau froide").

Etant rendue en troisième année, et n'en pouvant plus de voir ces fontaines inutilisées, j'allai voir Mme. Hale. Cette dernière parut trouver ma demande d'eau très saugrenue (pensant probablement que j'en avais la tête pleine), mais m'assura néanmoins qu'elle ferait quelque chose à ce sujet. Plus de deux semaines ont passé, et rien n'es-

survenu.

Il est à noter que dans les autres facultés, l'eau est froide et très bonne. Pourquoi ne pas avoir la même chose ici? Plusieurs étudiants interrogés m'ont affirmé partager mon idée.. Avant de mourir de sécheresse ou d'intoxication, easons crier nos droits!

Sylvie Lévesque

## Comic Mooters Wanted

Bill 83, the Legalese Language Charter, has been given final reading by the Moot Court Board and will be proclaimed into force on March 2, 1983. The Charter creates a Commission of Surveillance to receive petitions complaining of any violations of the Charter by persons within the Faculty.

The Commission is currently seeking law students interested prosecuting offences under the new Act. All prosecutions will take place on Tuesday, March 15, 1983 at the annual Student-Faculty Moot. Stagiaires and witnesses will also be needed at that time. Anyone interested in getting involved in this farce, please attend a meeting at the Moot Court Board Office on Thursday, February 17 at 1 p.m.

## The Bluebird Cafe

They laughed at us saying we were greasy punks and kicked our ass out into the grasp of the unwelcome cold to spoil those bugger's week-end retreat was going to be quite a feat so we mixed them a cocktail that would cause any drinker to flush

Accompanied by screams so it seemed as we warmed our hands in the heat of the fire

Robert Stephen

# Dean

Cont'd from p. 2

ley, he won a student sponsored poll to determine student preference for a Dean in 1974. He remarked, "students at the time felt they had elected the Dean." Could such a poll have an effect on the Recommendation Committee? Should we hold one again to gage student feelings?

## Transcript Verifications

### Deadline February 18

You can find an error in a mark (its happened that an A became transposed to a C)

Or a course not entered (which means you are not on the class roles at exam time)

Or a name misspelled, or a degree omitted

Or that you haven't enough credits to graduate (which really gets messy)

So please come on in to SAO any day between 9:00 and 5:00 on or before February 18.

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